



August 15, 2002

Ms. Gay Dodson, R.Ph.  
Executive Director/Secretary  
Texas State Board of Pharmacy  
333 Guadalupe Street, Box 21  
Austin, Texas 78701-3942

OR2002-4492

Dear Ms. Dodson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167122.

The Texas State Board of Pharmacy (the "board") received a request for a copy of the board's investigation file regarding a specific complaint. You state that you have released portions of the responsive information to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information that other statutes make confidential. The board raises section 552.101 in conjunction with section 565.055 of the Occupations Code. Section 565.055 provides in part:

(a) The board or the board's authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code[.]

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed to:

- (1) a person involved with the board in a disciplinary action against the license holder;
- (2) an entity in another jurisdiction that licenses or disciplines pharmacists or pharmacies;
- (3) a pharmaceutical or pharmacy peer review committee as described under Chapter 564;
- (4) a law enforcement agency; or
- (5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

Occ. Code § 565.055. You indicate that the submitted information consists of an investigative file that was prepared by board staff in connection with a consumer complaint. You explain that this information relates to fact-gathering concerning the complaint and the board's evaluation of the validity of the complaint. You do not indicate, nor does it appear to this office, that the requestor is a person to whom the board may disclose investigative information under section 565.055(c). Therefore, based on your representations, we find that the submitted information is confidential under section 565.055(b) and must be withheld from disclosure under section 552.101 of the Government Code. *See also* Open Records Decision No. 474 at 2-3 (1987) (addressing statutory predecessor).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

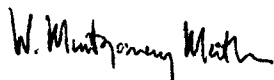
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/sdk

Ref: ID# 167122

Enc: Submitted documents

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(w/o enclosures)